

## STATE OF ILLINOIS

### ILLINOIS COMMERCE COMMISSION

Illinois Telecommunications Access Corporation	:	
	:	
	:	11-0316
Petition for Annual Line Charge	:	
Determination pursuant to 83 Ill. Adm. Code 755.500.	:	

### ORDER

By the Commission:

#### **I. Introduction**

On March 31, 2011, the Illinois Telecommunications Access Corporation ("ITAC") filed with the Illinois Commerce Commission ("Commission") a verified Petition, pursuant to 83 Ill. Adm. Code Part 755, containing its 2011 annual line charge filing. ITAC requests that the Commission determine the charge per access line and the assessment per fixed or non-nomadic interconnected Voice over Internet Protocol (VoIP) subscription that will fund the programs mandated by Section 13-703 of the Public Utilities Act ("Act"), 220 ILCS 5/13-703.

Specifically, ITAC requests that the Commission enter an Order maintaining the current level of eight cents per subscriber line. Pursuant to 83 Ill. Adm. Code 755.10, the order should also maintain the Centrex line charge at 1.6 cents per line and the PBX charge at 40 cents per PBX trunk. ITAC further requests that the charge for services provisioned by T-1 lines and other advanced services mirror each carrier's application of 9-1-1 charges. In addition, pursuant to Section 13-703(f) of the Act, ITAC requests that the Commission's Order establish the assessment on fixed or non-nomadic interconnected VoIP residential subscriptions at 8 cents per subscription and the assessment on fixed or non-nomadic interconnected VoIP business subscriptions at the Centrex rate of 1.6 cents per business subscription. ITAC's petition also notes that if the Commission's Order maintains the current line charges, telecommunications carriers will not need to file new tariffs.

Commission Staff ("Staff") filed a Response to the Petition supporting the proposed line charges. There are no contested issues. No Petitions to Intervene were filed.

#### **II. ITAC's Petition and Applicable Regulatory Requirements**

ITAC is a not-for-profit corporation formed by all Illinois local exchange carriers ("LECs") to implement the TTY and telebraille device distribution programs and the telecommunications relay service ("TRS") program, which are mandated by Section 13-

703 of the Act. Concerning cost recovery for these programs, Section 13-703(c) provides:

The Commission shall establish a rate recovery mechanism, authorizing charges in an amount to be determined by the Commission for each line of a subscriber to allow telecommunications carriers providing local exchange service to recover costs as they are incurred under this Section.

The Commission initially set the line charge at the then statutory maximum of 3 cents per subscriber line and 0.3 cents per Centrex line. Docket 85-0502, Order, December 11, 1985. Effective January 1, 1989, the General Assembly amended Section 13-703(c) to remove the cap on the line charge. On October 2, 1991, in Docket 91-0141, the Commission increased the subscriber line charge from 3 cents to 11 cents and the Centrex rate from 0.3 cents to 1.1 cents. In Docket 91-0141, the Commission concluded that a simplified line charge adjustment mechanism should be implemented through a rulemaking proceeding. Accordingly, on March 25, 1993, in Docket 91-0587, the Commission adopted Subpart F of Section 755. That subpart, which became effective on March 31, 1993, established a simplified mechanism for determining an appropriate line charge under Section 13-703.

These amendments to Section 755 require ITAC to present an annual line charge filing containing various schedules for the projection period, the financial statements of ITAC, and a statement from an independent public accountant. Under Section 755.510, if the hearing is waived, the Commission must enter an Order within 45 days of ITAC's annual filing.

Since 1993, ITAC has made annual filings and the Commission has determined the line charge as required by Section 755, Subpart F. By an Order entered on May 13, 2009, in Docket 09-0182, the Commission increased the previous ITAC line charges from 6 cents to 8 cents per subscriber line, 1.2 to 1.6 cents per Centrex line, and from 30 cents to 40 cents per PBX trunk. Most recently, in an Order on Rehearing entered on June 25, 2010 in Docket No. 10-0245, the Commission maintained the line charge at 8 cents per subscriber line, 1.6 cents per Centrex line, and 40 cents per PBX trunk.

On June 15, 2010, Public Act 096-0927 was signed into law. Public Act 096-0927 created a new Section 15-703(f) of the Act, which requires fixed or non-nomadic interconnected VoIP providers to collect and remit assessments supporting programs for persons with hearing or speech disabilities from their end-user customers in a competitively neutral manner in the same manner as a telecommunications carrier providing local exchange service. Section 13-703(f) of the Act provides:

Interconnected VoIP service providers in Illinois shall collect and remit assessments determined in accordance with this Section in a competitively neutral manner in the same manner as a telecommunications carrier providing local

exchange service. Interconnected VoIP services shall not be considered an intrastate telecommunications service for the purposes of this Section in a manner inconsistent with federal law or Federal Communications Commission regulation.

ITAC projects total relay service expenses of \$3,088,957.00 for 2011, as compared to actual relay expenses of \$2,883,893 in 2010. The projected relay expense for 2011 is based on an estimate of the average call length applied to anticipated call volumes and contracted cost per minute amounts, for both standard telecommunications relay service and captioned telephone relay service. The estimates of average call length are based on actual data from 2010. ITAC's 2011 TRS expense projections reflect an estimated decrease in traditional relay call volumes and projected increases both in the volume of captioned telephone services and in the contractual price of captioned telephone relay service.

On December 17, 2003, in Docket 03-0357, the Commission amended Section 755 to require, *inter alia*, that ITAC implement a voucher program for distribution of assistive telecommunications equipment and to permit ITAC to offer a wider range of equipment. Thus, ITAC projects 2011 capital expenditures of approximately \$869,670 to purchase TTYs, signalers and amplified telephones for the voucher program. ITAC's projection also includes expenses for the purchase of captioned telephones and braille phones for the equipment loan program. In addition, ITAC's 2011 projections reflect increased administrative, distribution, and maintenance expenses, as a result of the continued growth of the amplified telephone and TTY voucher programs planned for 2011 and the exchange of amplified telephones distributed in 2006 or earlier, as provided in ITAC's tariff.

Also, as the Petition notes, the Federal Communications Commission ("FCC") required that all TRS be accessed *via* 7-1-1 by October, 2001. ITAC and its TRS vendor, Sprint, successfully implemented 7-1-1 access prior to the required date. As required by the FCC, ITAC's 2011 projections include educational and promotional expenses to continue to inform the public of the 7-1-1 service.

Pursuant to a notice issued by the Telecommunications Division of the Commission, fixed or non-nomadic interconnected VoIP providers were to report to ITAC their subscription data as of June 30 and December 31, 2010 and were to begin remitting assessments to ITAC as of January 1, 2011. Draft amendments to Part 755 implementing the provisions of Public Act 096-0927, drafted by workshop participants and posted by the Telecommunications Division, specify how ITAC is to use the December 31, 2010 subscription data in its projections for 2011. Accordingly, based on December 31, 2010 subscription data provided to ITAC by fixed or non-nomadic interconnected VoIP providers, ITAC's 2011 projections contain just under \$200,000 in revenue from assessments projected to be collected and remitted by fixed or non-nomadic interconnected VoIP providers.

The line charge methodology of 83 Ill. Adm. Code 755.500 ensures, among other things that ITAC maintains a sufficient, but not excessive, cash balance. This cash balance provision of the Commission's rule is critical in light of the unique status of ITAC:

ITAC, unlike public utilities, has no retained earnings, and no alternative means of raising capital. Moreover, because public utilities regulated by this Commission charge per unit of service, greater-than-projected usage of utility services results in increased revenue as well as expenses. In contrast, the subscriber line charge, which is ITAC's principal funding source, does not produce increased revenue when usage increases.

*In re: Establishment of a cost recovery mechanism for programs required by Section 13-703 of the Public Utilities Act, Docket 91-0587 (Oct. 21, 1992).* Moreover, ITAC states in its Petition, it is important to recognize that year-to-year fluctuations in the level of the line charge are expected as a result of the mechanics of 83 Ill. Adm. Code 755.500. This is because the line charge mechanism insures a refund to telephone subscribers for amounts collected in prior years in excess of ITAC's expenses and cash balance ceiling. Likewise, the mechanism requires increases if projected revenues do not cover expenses and ensure that ITAC has an adequate cash balance.

For 2011, the line charge mechanism requires no change in the subscriber line charge and VoIP assessment, as a result of the current level of ITAC's cash balance, the additional projected revenues from assessments collected and remitted by fixed or non-nomadic interconnected VoIP providers, a significantly reduced price for captioned telephones, and the projected continued decrease in TRS minutes of use. All of these factors offset the projected increased usage of captioned telephone relay, the increased price for captioned telephone relay service, and the projected increase in the distribution of equipment under the voucher program, and allow ITAC to maintain the 8 cent line charge and VoIP assessment for 2011.

ITAC's Schedules A-1 through A-12, attached to the Petition, result in a determination that, under the projection assumptions utilized, the line charge required to fund the programs mandated by Section 13-703 of the Act for the period January 1, 2011 through December 31, 2011 shall be 8 cents per subscriber line. In Docket 03-0357, the Commission amended 83 Ill. Adm. Code 755.10, effective June 1, 2004, to provide that one subscriber line charge shall be applied for each five Centrex lines and five charges shall be applied for each PBX trunk. Accordingly, a charge of 1.6 cents should be assessed per Centrex line and 40 cents per PBX trunk. Also effective June 1, 2004, pursuant to 83 Ill. Adm. Code 755.10, the charge for other multi-channel technologies is stated in ITAC's tariff, Ill.C.C. No. 3, original page 3.1, which provides that "charges for services provisioned by T-1 lines and other advanced services shall mirror the carrier's applications of 9-1-1 charges for bills issued on and after June 1, 2004. . ."

Pursuant to Section 13-703(f) of the Act, the assessment on fixed or non-nomadic interconnected VoIP subscriptions should be imposed in a competitively neutral matter, in the same manner as the line charge is imposed on local exchange carriers. Accordingly, the assessment on each fixed or non-nomadic interconnected VoIP subscriptions should be 8 cents per residential subscription, and 1.6 cents (the Centrex rate) for each business subscription.

The Commission's Order in Docket 03-0357 amended Section 755.105 to require resellers of telecommunications services (as "resale" is defined in Section 13-211 of the Act) to collect the applicable monthly line charges from their customers and remit them to ITAC. Previously, until July 1, 2004, resellers could make contractual arrangements with LECs to fulfill their remittance obligations. Further, in Docket 03-0357, the Commission modified 755.105(a) so that all Illinois LECs would identify any applicable line charges on each customer's bill, effective July 1, 2004.

ITAC's Petition also includes its audited financial statements, as of December 31, 2010, as required by 83 Ill. Adm. Code 755.500(a)(1), its projected statement of financial position, projected statement of activities, projected statement of cash flows, and summary of significant projection assumptions and accounting policies for the projection period, as required by 83 Ill. Adm. Code 755.500(a)(2). As required by 83 Ill. Adm. Code 755.500(a)(4), the Petition also includes the written opinion of an independent accounting firm that ITAC's projection statement of financial position and statements of activities and cash flows comply with the guidelines for presentation of a projection established in the "Guide for Prospective Financial Information" by the American Institute of Certified Public Accountants and that ITAC's underlying assumptions provide a reasonable basis for management's projections (given the hypothetical assumptions used), as required by Section 755.500(a)(4).

Additionally, the Petition states that within ten days of its filing, ITAC will publish notice of the Petition in accordance with Section 755.515(a).

### **III. Potential Impact of New Technology on ITAC's Line Charge**

In its Petition, ITAC points out that the line charge methodology of Section 755.500 was enacted 18 years ago. Since that time, ITAC has operated without requesting emergency or interim adjustments to the line charge (pursuant to Section 755.520), and without curtailing programs or services for budgetary reasons. During that period, the line charge has ranged from 3 cents to 15 cents per subscriber line, averaging 8.2 cents over the 18 years.

ITAC cautions, however, that the line charge could rise in the next few years, if the FCC decides to allocate some costs of new Internet-based relay services on the states. Currently, the FCC encourages relay providers to offer Video Relay Services ("VRS"), Internet Protocol ("IP") relay, and IP Captioned Telephone Relay Services ("IP CTS"). In each of these services, the user connects to a Communications Assistant

through the Internet rather than the public switched telephone network ("PSTN"). The second leg of the relay service, from the Communications Assistant to the called party, travels over the PSTN. See In the Matter of Telecommunications Relay Services..., CG Docket No. 03-123, FCC 06-182 (1/11/07) ¶¶ 5, 6, 13, 14. ITAC states that all such calls are presently compensated through the Interstate TRS Fund, which is administered by the National Exchange Carrier Association. These forms of TRS are presently not mandatory. However, the FCC stated in 2007 that it would revisit the cost recovery of Internet-based TRS, "including jurisdictional separations of costs," as well as whether such services should be mandatory. Id., ¶ 25 and fn. 80; see also In the matter of Telecommunications Relay Services, CG Docket No. 03-123, FCC 06-106 (7/20/06). ITAC notes that if the FCC determines that some of the costs of Internet-based TRS should be allocated to the states, the impact on ITAC's line charge and VoIP assessment could be significant.

In addition, increased usage of captioned telephone relay service could impact ITAC's line charge in the future. Minutes of use of captioned telephone relay service are increasing, as more hard of hearing customers take advantage of the service. At the same time, the price per minute of captioned telephone relay service has been increasing and could continue to rise.

ITAC also points out that the line charge and VoIP assessment will also be impacted in the future by the decline in local exchange carrier subscriber lines in Illinois. ITAC's line charge calculation spreads its projected operating costs (net of revenue) over all landline subscriber lines and now over fixed or non-nomadic interconnected VoIP subscriptions in Illinois. There has been a significant decrease in the number of Illinois landline subscriber lines over the last decade and more. This continued decline in subscriber lines and equivalents, even with the addition of assessments on certain VoIP subscriptions beginning in 2011, puts upward pressure on ITAC's line charge and assessment. ITAC notes that, while the impact on the line charge and assessment has been mitigated by the requirement that ITAC use a three-year historical average in projecting its subscriber lines and by the addition of assessments on certain VoIP subscriptions, the continuing decline in landline subscriber lines has had and will continue to have an impact on the charge per line and the assessment per VoIP subscription needed to fund ITAC's programs.

## **V. Staff's Response**

Staff filed its response to ITAC's Petition on April 12, 2011. Staff states that it has reviewed the Petition and supporting documentation and has conducted a field review of ITAC's records. Staff "finds no reason to contest" ITAC's proposed line charges.

In its Response, Staff proposed uniform tariff language to assist those carriers whose current tariff does not reflect the correct subscriber line charge, Centrex charge and PBX charge, and T-1 and other advanced services charges. The proposed language is as follows:

Pursuant to the Order dated May \_\_\_\_, 2011, of the Illinois Commerce Commission in Docket 11-0316, \_\_\_\_\_ Company will impose a supplemental charge of eight cents per month per line for all Illinois telephone and VoIP subscriber lines other than Centrex-type and PBX lines, a charge of 1.6 cents for each Centrex-type line, and a charge of 40 cents per PBX trunk. Charges for services provisioned by T-1 lines and other advanced services shall mirror \_\_\_\_\_ Company's application of 9-1-1 charges. These charges shall be effective with bills rendered on or after June 1, 2011 or at the beginning of the first cycle after June 1, 2011.

## **VI. Commission Analysis and Conclusion**

ITAC's annual line charge filing is supported by the required schedules and properly utilizes a projection period of January 1, 2011 through December 31, 2011. Those schedules sustain ITAC's request for a subscriber line charge and residential VoIP assessment of 8 cents, a Centrex line charge and business VoIP assessment of 1.6 cents, and a PBX trunk charge of 40 cents. Charges for services provisioned by T-1 lines and other advanced services shall mirror each company's application of 9-1-1 charges.

As requested by ITAC, its member LECs who have existing tariffs consistent with the amendments to Section 755 and the current line charges will not be required to file new tariffs. Staff proposes that any carriers whose current tariff does not reflect the correct line charge amount should be directed to file a new tariff within 15 days of the date of this Order. These tariffs should take effect June 1, 2011.

## **VII. Findings and Ordering Paragraphs**

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties and the subject matter herein;
- (2) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (3) ITAC has complied with the requirements of 83 Ill. Adm. Code Part 755 Subpart 5, Line Charge Adjustment Mechanism;
- (4) the line charge under Section 13-703(c) of the Act shall remain at 8 cents per subscriber line, 1.6 cents per Centrex line, and 40 cents per PBX trunk; charges for services provisioned by T-1 and other advanced services shall mirror the carrier's application of 9-1-1 charges;
- (5) the assessment under Section 13-703(f) of the Act on each fixed or non-nomadic interconnected VoIP subscription shall be 8 cents per residential subscription and 1.6 cents per business subscription;
- (6) each Illinois LEC and each fixed or non-nomadic interconnected VoIP provider shall be served with a copy of this Order;
- (7) any Illinois LEC with current tariffs that reflect the line charge amounts listed in (4) above shall not be required to file new tariffs;
- (8) any Illinois LEC whose current tariffs do not reflect the correct line charge amounts shall be directed to file, within 15 days of the date of this Order, and without further notice, a tariff that reflects the line charges required by this Order; such tariffs should become effective by June 1, 2011; and
- (9) the following language proposed by Commission Staff should be used by each Illinois LEC when complying with Finding (8):

Pursuant to the Order dated May\_\_\_\_, 2011, of the Illinois Commerce Commission in Docket 11-0316, \_\_\_\_\_ Company will impose a supplemental charge of eight cents per month per line for all Illinois telephone and VoIP subscriber lines other than Centrex-type and PBX lines, a charge of 1.6 cents for each Centrex-type line, and a charge of 40 cents per PBX trunk. Charges for services provisioned by T-1 lines and other advanced services shall mirror \_\_\_\_\_ Company's application of 9-1-1 charges. These charges shall be effective with bills rendered on or after June 1, 2011 or at the beginning of the first cycle after June 1, 2011.



IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the relief requested in the Petition filed by the Illinois Telephone Access Corporation is granted and, pursuant to Section 13-703(c) of the Act, the line charge shall be maintained at 8 cents per subscriber line and 1.6 cents per Centrex line, effective June 1, 2011.

IT IS FURTHER ORDERED that a charge of 40 cents shall be applied to each PBX trunk, effective June 1, 2011.

IT IS FURTHER ORDERED that charges for services provisioned by T-1 and other advanced services shall mirror the carrier's application of 9-1-1 charges, effective June 1, 2011.

IT IS FURTHER ORDERED that, pursuant to Section 13-703(f) of the Act, the assessment for fixed or non-nomadic interconnected VoIP subscriptions shall be established at 8 cents per residential subscription and 1.6 cents per business subscription.

IT IS FURTHER ORDERED that a copy of this Order shall be served on all Illinois local exchange carriers and fixed or non-nomadic interconnected VoIP providers by the Chief Clerk of the Commission, and any local exchange carriers who have existing tariffs consistent with the current line charges shall not be required to file new tariffs.

IT IS FURTHER ORDERED that any local exchange carriers with tariffs that do not reflect the current line charges are hereby directed to file tariffs in compliance with this Order within 15 days of the date of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 24th day of May, 2011.

(SIGNED) DOUGLAS P. SCOTT

CHAIRMAN